

THIS AGREEMENT, made as of the 28th day of April, 2006 between The City of New York (the "City"), a municipal corporation of the State of New York, the Department of Parks & Recreation ("Parks"), and the Central Park Conservancy, Inc. ("CPC"), a New York not-for-profit corporation.

WITNESSETH

WHEREAS, pursuant to Section 531 of the New York City Charter, the Department of Parks & Recreation ("Parks") was created, the head of which was designated as the Commissioner of Parks and Recreation ("Commissioner"); and

WHEREAS, Parks is charged with the duty to manage, maintain and operate City parks and recreation facilities pursuant to Section 533 of the New York City Charter; and

WHEREAS, pursuant to its Certificate of Incorporation, CPC was formed in 1980 for the purpose of promoting and assisting in the restoration, maintenance and management of Central Park; and

WHEREAS, the City desires to encourage the participation of interested not-for-profit corporations in providing supplemental services, including maintenance, recreational and educational programs, for the benefit of the public; and

WHEREAS, CPC and Parks have developed an effective public/private partnership through which CPC, under the supervision of the Commissioner, has undertaken substantial responsibility for the maintenance, repair, public programming, and capital improvements in Central Park, and has provided funds for the costs associated therewith; and

WHEREAS, CPC has raised through June 30, 2005 over \$322 million for Central Park from donations from the public, foundations, and other private sources, \$ 101 million of which has been and will be used for capital restoration, \$171 million of which has been and will be used for operations, maintenance and programming, and \$ 50 million of which has been placed in an endowment to assure continuity of the above-referenced work; and

WHEREAS, CPC is willing to continue to raise money for use in Central Park and to continue to perform responsibilities associated with maintaining and repairing Central Park for the benefit of the public, including the provision of programs and activities that will increase public interest in and awareness of Central Park; and

WHEREAS, the City desires to obligate CPC to perform the services hereinafter set forth; and

WHEREAS, the City and CPC executed an agreement to perform the services hereinafter set forth on February 11, 1998; and said agreement provided for a renewal term of eight (8) years and the parties mutually agree to renew the agreement as forth herein;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties do hereby agree as follows:

1. SCOPE OF AGREEMENT

CPC shall provide, or cause to be provided, services specified for maintaining and repairing Central Park to the reasonable satisfaction of the Commissioner. Such services shall include keeping and maintaining Central Park in good condition and repair, all in accordance

with the provisions of this agreement.

2. TERM

The term of this agreement ("Term") shall be eight years, and shall commence on July 1, 2005, and terminate on June 30, 2013, unless sooner terminated by the Commissioner, as provided in paragraph 22 hereof, or by CPC, as provided in paragraph 23 hereof.

3. MAINTENANCE AND REPAIR

A. General Standards. CPC shall maintain and repair Central Park in accordance with the standards set forth in this paragraph. All such maintenance and repair shall be performed by CPC in a good and worker-like manner.

(1) Cleaning.

a) Dirt, litter and obstructions shall be removed as needed, and trash and leaves collected and removed as needed so as to maintain Central Park in a clean, neat and good condition.

b) All walkways, sidewalks and all other improvements and facilities in Central Park, including comfort stations and playgrounds, shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

c) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface.

d) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

e) Branches and trees damaged or felled by excessive winds, ice, vandalism, or by any other reasons whatsoever, shall be promptly removed.

(2) Snow Removal

Snow and ice shall be removed from all walkways and paved surfaces within a reasonable period of time after each snowfall or accumulation of ice, so as not to interfere with safe passage.

Sand and/or salt shall be spread as needed.

(3) Landscape Maintenance

CPC shall perform the following landscape maintenance work:

a) Prune and trim trees and shrubs that are overextended, dead or are otherwise unsafe or unsightly, to maintain their natural form.

b) Remove or destroy any weeds from paving blocks, pavement, cobbled and concrete areas.

c) Apply fertilizer to trees, shrubs, plants and other lawn areas, as appropriate.

d) Replace any plants or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size, where appropriate.

e) Reseed and/or resod grass-covered areas and ballfields as needed.

f) Rake and collect leaves.

g) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.

h) Mow and edge grass-covered areas as needed.

i) Weed as needed.

(4) Repairs

Repairs shall include, but not be limited to, the following:

a) Benches or Other Seating: CPC shall replace any broken or missing bench slats and

paint benches, as needed.

b) Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.

c) Pavements: All paved surfaces shall be maintained in a safe and attractive condition. To the extent feasible, replacement materials shall match existing materials.

d) Signs: All graphics shall be maintained in a first class condition, and all vandalized or damaged signs shall be promptly cleaned or replaced with new signs that match other installed signs.

e) Facilities: All recreation facilities and equipment, other than the Arsenal, the Central Park Tennis Center, the Swedish Cottage, the Central Park Police Precinct, the Delacorte Theater, Lasker Pool, Rumsey Playfield (during the period in which it is used by SummerStage), and any other facilities and equipment that are located in Central Park and are operated pursuant to concession agreements, shall be maintained in good condition and good working order at all times.

f) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

g) Monument Maintenance: All monuments shall be maintained in good condition and repair, and CPC shall be responsible for bronze restoration, cleaning, repointing and stone work.

B. Financial Limitations. CPC agrees, prior to the commencement of each fiscal year, to submit its budget to the Commissioner for review and comment. The CPC budget shall set forth in

reasonable detail the amounts proposed to be allocated to each of the categories of services enumerated in paragraph 3 hereof. The CPC budget shall not be final until written approval is given by the Commissioner. CPC further agrees that the aggregate amount of the operating budget allocable to the services described in paragraph 3 shall be available for such services (without regard to the specific amount allocated to any category) and to the extent amounts in excess of such aggregate amount are necessary to perform the services described in paragraph 3 in any fiscal year, CPC agrees to use reasonable commercial efforts to make said amounts available; provided, however, that in no event shall CPC be obligated to expend funds that are restricted for a designated purpose for any other purpose.

C. Use of City Employees. Subject to applicable laws, rules, regulations, and contractual provisions, nothing contained in this agreement shall preclude City employees assigned to Central Park from performing services required to be performed under this agreement.

D. Use of City Equipment. CPC agrees to exercise reasonable care in the use, operation and custody of City property, including property and equipment leased by the City, used in the performance of this agreement.

E. Scenic Landmark. CPC acknowledges that Central Park is a designated New York City scenic landmark, and agrees to coordinate with Parks in the event that any report or approval is required from the Landmarks Preservation Commission and/or the Art Commission with respect to any maintenance or repair work undertaken pursuant to this Agreement.

F. Payments to CPC. All monies paid to CPC pursuant to this agreement according to the formulae described in paragraph 11 herein shall be used by CPC for the purposes set forth in this paragraph 3 in the fiscal year in which such payments are received or in the following fiscal

year.

4. MAINTENANCE EXCLUSIONS

Except as set forth in paragraph 3 herein, CPC shall have no duties, responsibilities or obligations with respect to the maintenance and repair of Central Park. Notwithstanding the foregoing, CPC accepts Parks' designation of CPC as its official agent for purposes of reporting to the appropriate City agency any hazardous road surface condition or defective street lighting fixtures or traffic signals, and CPC shall be responsible for reporting such conditions.

5. DESIGN APPROVALS

CPC shall comply with currently existing procedures for review of landscape redesign, renovation and rehabilitation projects in Central Park.

6. CONSTRUCTION DEFECTS & HAZARDOUS CONDITIONS

With respect to the services set forth in paragraph 3 hereof, CPC shall periodically inspect Central Park for hazardous conditions, and shall promptly repair any portion or feature of Central Park that exhibits defects or hazardous conditions, and shall promptly institute appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers.

7. MAINTENANCE AND REPAIR

CPC shall perform maintenance and repair activities to the reasonable satisfaction of the Commissioner, using its commercially reasonable best efforts to achieve compliance with the ratings for all enumerated categories set forth in the Parks Inspection Program Manual. The Parks Inspection Program Manual is attached hereto as Exhibit A, and incorporated herein by reference. Parks reserves the right in the future to extend the requirements of its existing rating system to Central Park.

8. MAINTENANCE OF EFFORT

Parks agrees to use reasonable efforts to maintain its current level of financial commitment to Central Park throughout the term of this agreement. Parks reserves the right to reduce the number of paid employees working in Central Park in the event of increases in productivity such as, but not limited to, developments in technology or private sector initiatives. Parks shall not be required to increase the level of funding allocated to City personnel working in Central Park in the event Parks' budget is increased during the term of this agreement. If Parks' operating budget is reduced during the term of this agreement, Parks may reduce the level of funding allocated to City personnel working in Central Park by no more than the percentage of the reduction in Parks' operating budget.

9. CONCESSIONS

Parks shall continue to manage and collect fees from all concessions currently in operation in Central Park, and reserves the right to develop additional concession opportunities in

Central Park.

9.5 FUNDRAISING EVENTS

CPC shall be permitted to use locations throughout Central Park for its own fundraising events, where the proceeds will be used solely to support CPC's obligations under this agreement to maintain and improve Central Park. Such fundraising events will not be considered special event concessions under Title 56 Section 2-10 of the Rules of the City of New York, but are subject to the prior approval of the Commissioner in his sole discretion.

10. ALTERATIONS BY PARKS

Parks will not make any major improvement or repair to Central Park without first providing a minimum of thirty days advance written notice to CPC, except in cases of emergency, as determined by the Commissioner, in which case Parks will notify CPC as promptly as practicable thereafter. Parks agrees that it will use its reasonable efforts to ensure that work on any improvements will cause no more than minimal interference with CPC's operations pursuant to this agreement.

11. FUNDING COMMITMENT/PAYMENTS TO CPC

Beginning with its fiscal year starting July 1, 2005, and for the term of this agreement, CPC agrees to raise and expend annually a minimum of \$5 million with respect to maintenance, repairs, programming, landscaping, and the renovation and rehabilitation of existing facilities in Central Park, including the services described in paragraph 3 hereof. For these purposes, (a) all costs and expenses of performing these services shall be included in computing the \$5 million threshold; provided, however, in no event shall (i) any costs and expenses attributable to the

corporate or development offices (including the salary of the President of CPC) or (ii) any City-originated or Parks-originated contribution to CPC in excess of \$100,000 be included in such determination, and (b) earnings on endowments and other funds shall be considered raised and expended in the year in which such earnings are used for any of the purposes set forth above in this section. In consideration of the services rendered pursuant to this agreement, in the fiscal year beginning on July 1, 2005, and in all subsequent years during the term of this agreement, Parks shall pay CPC an amount equal to \$1 million if the \$5 million threshold is met in the prior fiscal year, and \$.50 for each additional \$1 raised and expended by CPC in excess of \$5 million in the prior fiscal year, up to a maximum amount equal to an additional \$1 million, and an amount equal to 50% of annual net concession revenues above \$6 million derived by Parks in the prior fiscal year from concession operations in Central Park. In addition, Parks will reimburse CPC for up to \$100,000 in each year during the term of the agreement for vehicle purchases in connection with CPC's maintenance responsibilities for Central Park, upon proof of purchase in a form reasonably acceptable to Parks "Net Concession Revenues" shall be defined as gross concession revenues minus any expenditures by Parks for the construction or maintenance of concession facilities in Central Park. In the event CPC fails to perform services at the required standards, as set forth in paragraphs 3, 6 and 7 of this agreement, Parks reserves the right to withhold payment pursuant to this paragraph 11 pending CPC's cure of said deficiency.

CPC shall, no later than September 1 of each fiscal year during the term of this agreement, provide the Commissioner with a statement by its Chairman or President indicating whether it has met the \$5 million funding commitment for the most recently completed fiscal year. In the event that in any fiscal year CPC fails to raise and expend a minimum of \$5 million as set forth above, Parks shall not be liable to CPC for any payments under this paragraph in the

following fiscal year.

Parks shall provide quarterly reports to the Office of Management and Budget ("OMB") detailing the concession and special event revenues earned within Central Park in the current fiscal year. These reports will be due to OMB no later than one month after the end of each fiscal quarter – report deadline dates being November 1, February 1, May 1, and August 1. Parks shall, no later than September 1 of each fiscal year during the term of this agreement, provide CPC with a statement showing the amount of concession and special event revenues generated in Central Park for the prior fiscal year.

All monies paid to CPC pursuant to this agreement pursuant to the formulae described above shall be used by CPC for the purposes set forth in paragraph 3 of this agreement in the fiscal year in which such payments are received or in the following fiscal year.

All payments to CPC under this agreement shall be contingent on annual appropriations by the City Council, and shall be subject to all other applicable City, State and federal laws, regulations, requirements and practices; provided, however, that Parks agrees to include this specific budget item in its departmental estimate during the term of this agreement.

12. PAYMENT PROCEDURES

Parks shall make payments to CPC based on the formula set forth in paragraph 11 of this agreement. Such payments shall be made in three equal installments, and shall be remitted to CPC on December 31, March 31, and June 30 of each year during the term of this agreement, provided that CPC has performed its obligations under this agreement to the satisfaction of the Commissioner.

13. INSURANCE

A. CPC, at its own cost and expense, shall procure and maintain such insurance through the term of this agreement as will protect CPC from claims under the applicable Worker's Compensation Law. CPC shall also procure and maintain Employers Liability Insurance with limits of \$1,000,000 per accident. Failure of CPC to procure or maintain any insurance required under this agreement (the "Insurance Requirements") shall not relieve CPC of any liability under this agreement.

B. In addition to the above, CPC shall use its best efforts to have the following terms and conditions written into the policies of insurance as riders:

(1) The policies shall not be canceled, terminated or modified unless 30 days prior written notice is sent by certified mail to CPC and to the City addressed to the Commissioner, City of New York Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10021.

(2) Notices of accidents occurring in Central Park, sent by CPC to its insurance company, shall be deemed notice by both CPC and City to the insurance company.

C. (1) CPC shall require its subcontractors who perform work for CPC pursuant to this agreement and in connection with CPC's responsibilities in Central Park to procure and maintain a policy of commercial general liability insurance with such limits as may be requested by Parks from time to time, but not less than \$3,000,000 in respect to bodily injury or death arising out of any one occurrence, and \$1,000,000 for property damage. Any policy or policies evidencing such insurance shall include Parks, the City of New York, CPC, and their officers, trustees, employees, volunteers, and agents as additional insured parties, and CPC shall require its subcontractor(s) to provide CPC with a certificate of insurance naming such additionally

insured parties prior to the execution of any agreement with CPC. All policies to be maintained pursuant to this agreement shall be issued by an insurance company or companies authorized to do business in the State of New York having a Best's rating of at least A-(7) or a Standard & Poors rating of at least AA.

(2) CPC shall require the following terms and conditions to be written into all subcontractors' policies of insurance as riders:

(a) The policies shall not be canceled, terminated or modified unless 30 days prior written notice is sent by certified mail to CPC;

(b) Notices of claim shall be given by such subcontractor to its insurance company within 120 days after such claim is filed with the Comptroller of the City of New York;

(c) Notices of accidents occurring in Central Park, sent by such subcontractor to its insurance company shall be deemed notice by both CPC and the City to the insurance company.

(d) The insurance company shall defend, indemnify and hold harmless Parks, the City, CPC, their officers, trustees, employees, volunteers, and agents from any and all claims, suits, demands or judgments by reason of property damage or personal injuries, including death, arising out of or as a result of subcontracts under this agreement.

(e) The insurer waives all rights of subrogation against Parks, the City, CPC, their officers, trustees, agents, volunteers, and employees.

14. INDEMNIFICATION

A. City agrees to indemnify and hold harmless CPC, its officers, trustees, employees,

agents, and volunteers from and against any and all liabilities, obligations, damages and expenses arising from all services performed and activities conducted by CPC pursuant to this agreement in Central Park, except that with respect to personnel, as defined in paragraph 19, the City's indemnification will only be effective upon satisfactory completion by CPC of a screening and background check of such personnel. Notwithstanding the foregoing, City's obligation to indemnify and hold harmless CPC, its officers, trustees, employees, agents, and volunteers shall not apply to any liability, obligation, damage or expense which arises from or in connection with the gross negligence, or intentional or willful acts or omissions of CPC, its officers, trustees, employees, agents, or volunteers.

B. In the event of any claim or legal proceeding against the City by an employee or volunteer of CPC in connection with the terms of this agreement, CPC agrees to indemnify and hold harmless the City, its officers, employees, volunteers, and agents from and against any and all liabilities, obligations, damages and expenses arising out of or in connection with the negligence or intentional or willful acts or omissions of CPC, its officers, trustees, employees, volunteers or agents.

C. In the event that a claim arises, and indemnification is sought by CPC pursuant to this paragraph, CPC shall promptly notify the City of such claim and, if known, the facts constituting the basis for such claim (hereinafter referred to as a "Third Party Claim"); provided, however, that in the event a claim for indemnification arises resulting from or in connection with any claim or legal proceedings by a third party, CPC shall give such notice thereof to the City no later than 10 days prior to the time any response to the asserted claim is required, if possible; and provided further, however, that failure to give such reasonably prompt notice shall not release, waive or otherwise affect the City's obligation with respect thereto, except to the extent of any loss and

prejudice as a result thereof. In the event a Third Party Claim arises, the City may assume the defense of such Third Party Claim if either

(1) the defense of the Third Party Claim is tendered to the City by CPC and within 30 days thereafter such tender is accepted by the City, or (2) within 30 days after the date on which written notice of a Third Party Claim has been given to the City, the City shall acknowledge in writing to CPC and without qualification the City's indemnification obligations as provided in this paragraph. Except as authorized by the City, CPC shall not, in such instances, have the right to be represented by counsel at its own expense in any such contest, defense, litigation or settlement conducted by the City. So long as the City has assumed the defense of any Third Party Claim, and is defending such claim in good faith, the City shall have the exclusive right, in its sole discretion, to settle any such claim, either before or after the initiation of litigation, at such time and on such terms as the City deems appropriate, with approval of the Comptroller, as provided in the New York City Charter, provided that such settlement does not impose any obligations on CPC. CPC also shall not be required to enter into any such settlement that does not include an unconditional release of CPC of all liability in respect of such claim. If CPC is entitled to indemnification against a Third Party Claim, and the City fails to assume the defense of a Third Party Claim pursuant to this paragraph, CPC shall have the right, without prejudice to its right of indemnification hereunder, to contest, defend and litigate such Third Party Claim; provided that CPC may not settle such Third Party Claim without the prior written consent of the City, such consent not to be unreasonably withheld.

D. CPC, its officers, trustees, employees, agents, and volunteers, shall cooperate and assist the City with the review, adjudication and/or settlement of all claims and actions against CPC subject to the indemnity obligations outlined in this paragraph. CPC shall provide all

documents, incident and/or accident reports and such other assistance as is necessary for the formulation and presentation of any defense pursuant to the indemnity obligations outlined herein.

15. INSPECTION AND AUDIT REPORTS.

A. Records and Accounts. CPC will establish and maintain accurate records and accounts which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this agreement. Such records and accounts shall conform to generally accepted accounting principles ("GAAP").

B. Inspection and Audit Rights. CPC will provide notice to the Commissioner of all meetings, hearings, and proceedings of CPC's Board of Directors, and will make available for consultation any of its officers and employees whose work relates to the performance of this agreement. CPC also will make available, at its principal place of business, for audit, inspection, or removal of copies by Parks, the New York City Comptroller, or by a Parks-authorized independent auditor, CPC's books and records relating to the performance of this agreement, including, but not limited to: (1) all fiscal records, including books, accounts, and canceled checks; (2) internal and external audits completed within the last three years; (3) minutes of meetings of the Board of Directors; (4) programs, research, and other reports and publications in connection with CPC's responsibilities in Central Park pursuant to this agreement; (5) registration and attendance records of CPC sponsored programs, and any other matters relating to the performance of and compliance with this agreement, or with any laws or regulations governing the conduct of CPC under this agreement.

16. NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this agreement involves use by CPC of Parks' papers, files, data or records at Parks facilities or offices, CPC shall not remove any such papers, files, data or records, therefrom without the prior approval of Parks.

17. INSPECTION AT SITE

Parks shall have the right to have representatives of Parks or of the City or of the State or Federal governments present at Central Park to observe the work being performed pursuant to this agreement.

18. RETENTION OF RECORDS

CPC agrees to retain all books, records, and other documents relevant to this agreement for six years after the final payment or termination of this agreement, whichever is later. City, State and Federal auditors shall have full access to and the right to examine any of said materials during this period.

19. PERSONNEL

A. Selection of Central Park Administrator. The Commissioner and CPC shall jointly select the individual who shall serve as the Administrator of Central Park. The Commissioner shall have the right to terminate the Administrator in his discretion.

B. Notification of Appointment of Key Personnel. CPC will notify Parks in writing within 5 days of appointments to or resignations from the position of President and Chief Financial Officer. In addition, CPC will notify Parks in writing, within 10 days of the

occurrence, of any change in the individuals who serve as trustees and officers of CPC.

C. Background Checks. For purposes of this section, the word "personnel" means each employee and volunteer whose duties and responsibilities relate primarily to working with children or in close proximity to children. CPC will be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references, and suitability for working with children. CPC agrees to comply with all guidelines and procedures of Parks concerning the screening and employment of personnel provided in writing to CPC, including, but not limited to the following:

(1) CPC will be responsible for screening of all personnel, including: (a) substantiating credentials; (b) reference checks.

(2) CPC agrees not to hire or retain any personnel who refuse to: (a) provide the names of references; (b) provide documentation of credentials; (c) provide information on criminal conviction records; (d) provide other requested information which may bear on the applicant's fitness to work with or in close proximity with children.

(3) CPC agrees not to hire or retain any personnel: (a) who have not completely and truthfully reported information concerning their criminal convictions; (b) whose criminal convictions record directly bears on their fitness to work with or in close proximity with children, or whose employment would involve an unreasonable risk to the safety or welfare of children, subject to and consistent with Article 23-A of the New York State Correction Law; or (c) who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.

D. Intentionally Omitted.

E. CPC and Parks agree that CPC is an independent contractor. It is understood and agreed that all personnel employed by CPC are employees of CPC and are not employees of Parks or the City, and that CPC alone is responsible for their work, direction, compensation and personal conduct while engaged pursuant to this agreement. CPC agrees that neither it nor its personnel or agents will hold themselves out as, or claim to be, officers or employees of the City of New York, or of any department, agency, or unit thereof, and that they will not, by reason hereof, make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City of New York, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or employee retirement membership or credit. Nothing included in this paragraph or in any other provision of this agreement shall be construed to impose any liability or duty upon Parks or the City to the persons, firms or corporations employed or engaged by CPC as employees, servants, agents, consultants, experts or independent contractors or in any other capacity whatsoever or to render Parks or the City liable to any persons, firms, corporations, associations or to any government for the acts, omissions, liabilities, obligations and/or taxes of any nature, including, but not limited to, unemployment insurance of CPC or its consultants, experts, employees, servants, agents or independent contractors. Nothing in this subparagraph shall limit the indemnification provisions enumerated in paragraph 14.

F. CPC shall not discriminate against any employee or applicant for employment because of race, creed, religion, color, sex, age, national origin, disability, marital status or sexual orientation.

20. INVESTIGATIONS CLAUSE

A. The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York ("State") or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, or license that is the subject of the investigation, audit or inquiry.

B. 1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York or New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered

into with the City, the State, or any political subdivision thereof or any local development corporation within the City; then

C. 1) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subparagraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

1) The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2) The cancellation or termination of all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, with the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below.

He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits, or licenses with the City.

4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subparagraph D above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definition of Terms

1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provisions of this agreement, the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three days written notice in the event CPC fails promptly to report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by CPC, or affecting the performance of this contract.

21. NOTICE

CPC shall prepare and provide to Parks operational status reports as reasonably requested by the Commissioner, and reports of major accidents or unusual incidents occurring in Central Park on a regular basis and in a format reasonably acceptable to the Commissioner. CPC shall

promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which may be asserted against CPC with respect to Central Park for which indemnification is not sought by CPC pursuant to paragraph 14. CPC shall designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the maintenance and repair of Central Park, and CPC shall notify Parks in writing as to said person's name and address.

All notices from CPC to Parks shall be in writing and delivered to the attention of the Deputy Commissioner for Operations, City of New York Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10021, or such other address as Parks may designate, with a copy to Parks General Counsel at the same address. All notices from Parks to CPC shall be dispatched in the same manner, and delivered to CPC at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10021, Attn: President, with a copy to Kenneth H. Heitner, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153.

22. COMMISSIONER'S RIGHT TO TERMINATE

A. Parks and/or the City shall have the right to terminate this agreement in whole or in part:

- (i) Under any right to terminate as specified in any section of this agreement.
- (ii) If the Commissioner determines that CPC failed to comply with any of the terms and conditions of this agreement, including CPC's failure to perform services at the required standards set forth in paragraphs 3, 6 and 7 of this agreement.
- (iii) Upon CPC becoming insolvent.
- (iv) Upon the commencement of any proceeding under the Bankruptcy Act, by or

against CPC, either voluntary or involuntary

(v) Upon the Commissioner's determination that termination is in the best interest of the City.

B. Parks shall give CPC written notice of any termination of the agreement specifying therein the applicable provisions of subsection A of this paragraph and the effective date thereof, which shall not be less than ten days from the date of receipt of written notice by CPC.

C. In the case of (ii) above, the Commissioner shall first give written notice to CPC outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by CPC within a reasonable time (if no time is specified), or in the time specified in the Commissioner's notice, either of which shall in no event be less than ten days except in cases of emergency (as determined by the Commissioner), the failure to cure the deficiencies shall result in immediate termination of this agreement.

D. In the case of (v) above, the Commissioner shall provide written notice of such determination to CPC, and this agreement shall terminate effective ninety days from the date such notice is received by CPC.

E. Upon termination of this agreement CPC shall comply with Parks or City close-out procedures, including but not limited to:

(i) Furnishing within thirty days an inventory to Parks or the City of all equipment, appurtenances and property purchased through or provided under this agreement, and carrying out any Parks or City directive concerning the disposition thereof.

(ii) Not incurring or paying any further obligation pursuant to this agreement beyond the termination date. Any obligation necessarily incurred by CPC on account of this agreement prior to receipt of notice of termination and falling due after such date shall be paid by

Parks or the City in accordance with the terms of this agreement. In no event shall the term "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between CPC and its landlord.

(iii) Turn over to Parks or City or its designees all books, records, documents and materials specifically relating to this agreement.

(iv) Submit, within ninety days, a final statement and report relating to the agreement. The report shall be made by a certified public accountant or a licensed public accountant.

F. In the event Parks or the City shall terminate this agreement in whole or in part, as provided in paragraphs I, ii, iii or iv of subsection A of this paragraph, Parks or City may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and CPC shall continue the performance of this agreement to the extent not terminated hereby.

G. Notwithstanding any other provisions of this agreement, CPC shall not be relieved of liability to the City for damages sustained by the City by virtue of CPC's breach of the agreement, and Parks may withhold payments to CPC for the purposes of set-off until such time as the exact amount of damages due to the City from CPC is determined. It is further agreed that the City shall not be relieved of liability to CPC for damages sustained by CPC by virtue of the City's breach of the agreement.

H. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to all other rights and remedies provided by law or under this agreement.

23. CPC'S RIGHT TO TERMINATE

A. CPC will have the right to terminate this agreement under the following conditions:

(i) Imposition by Parks of additional material conditions to or change in the scope of this agreement which CPC reasonably finds unacceptable;

(ii) Failure of Parks to make payments to CPC as provided in paragraph 12 hereof;

(iii) Failure by the City Council to make the appropriations necessary to enable Parks to make payments to CPC as provided in paragraph 12 hereof;

(iv) Material breach by Parks or City of any of its obligations hereunder.

B. CPC will provide Parks not less than 10 days' written notice of termination which specifies the reason(s) therefor, and, in the case of (iii) and (iv) above, the City and/or Parks shall have 30 days to cure the basis for CPC's termination.

24. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

CPC agrees to comply with all applicable laws, rules, regulations, requirements, guidelines, directives, instructions and orders which are issued by duly authorized officials of agencies of the United States, State or City. This provision includes, but is not limited to, the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

25. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. CPC makes the following representations and warranties:

(i) CPC is a not-for-profit corporation duly organized, validly existing, and in

good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform this agreement.

(ii) This agreement has been duly authorized by all necessary corporate action on the part of CPC, has been duly executed and delivered by CPC, and assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of CPC.

(iii) The execution and delivery of this agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under CPC's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which CPC is bound, or, to the knowledge of CPC, any order, rule or regulation of any court, governmental agency or body having jurisdiction over CPC or any of its activities or properties.

(iv) CPC has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this agreement.

(v) CPC has not employed any person to solicit or procure this agreement, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of the agreement.

B. CPC covenants and agrees that it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

C. City hereby represents and warrants that this agreement has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by CPC, and registration by the Comptroller of the City of New York, constitutes a legal, valid, binding and enforceable obligation of the City. Any and all payments to CPC that may be made pursuant to this agreement are subject to review and approval by the Comptroller of the City of New York.

26. CONFLICT OF INTEREST

CPC represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. CPC further represents and warrants that in the performance of this agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Parks, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this agreement or in the proceeds thereof.

27. NO ASSIGNMENT

No assignment of this agreement by CPC, in whole or in part, will be effective unless it is agreed to, in writing, by Parks and signed by a duly authorized representative of Parks.

28. PURCHASES AND SUBCONTRACTS OF GOODS AND SERVICES

A. All subcontracts and other purchases of goods and services and leases of equipment made by CPC in connection with the performance of work required under this agreement shall be procured in accordance with the requirements of this paragraph and any other procurement guidelines and procedures established by Parks. However, the provisions of this paragraph shall not apply to expenditures related to fundraising, nor to the hiring of employees by CPC, or to other items unrelated to the duties of CPC under this agreement.

B. Purchases and Subcontracts Between \$5000 and \$25,000. All purchases and subcontracts and leases of equipment having a total price of \$5000 or more, but less than \$25,000, shall be subject to the following requirements:

- (1) CPC shall solicit and shall receive a minimum of three bids; provided, however, that CPC may, with the prior written approval of Parks, (i) waive the requirement that CPC solicit three bids where an emergency exists, or (ii) waive the requirement that CPC receive three bids where CPC submits proof that it has solicited at least three bids and Parks determines that the bid submitted by the lowest responsive and responsible bidder is acceptable.
- (2) CPC shall keep a log recording its solicitations to prospective bidders and all bids received, and shall provide copies of such records to Parks along with a copy of any scope of work and/or specifications prepared for such solicitations upon request.
- (3) CPC shall award all subcontracts or other contracts for goods and services and leases of equipment to the lowest responsive and responsible bidder unless CPC determines that an award to another bidder is justified because the goods or services obtained are of a

higher quality than that offered by the lowest bidder, in which case it shall make a written record of said finding. If CPC determines that an award to another bidder is justified for any other reason, it must first obtain the written approval of Parks.

C. Purchases and Subcontracts Equal to and Greater than \$25,000. All purchases, subcontracts and leases of equipment having a total contract price equal to or greater than \$25,000 shall be subject to the following requirements:

(1) Prior to soliciting bids for any proposed contract, unless otherwise directed in writing by Parks, CPC shall prepare and obtain Parks approval of:

- (a) a detailed scope of work and specifications for the work to be performed, or the goods or services to be procured, pursuant to such contract. Parks approval, or failure to approve, any plans and specifications prepared by CPC in accordance herewith shall not be, nor construed as or relied upon as being, a determination that such plans and specifications comply with applicable laws, orders, ordinances, rules and regulations or that such plans and specifications are structurally, architecturally or by any other standard technically correct, or operate as a waiver of any claims for defects in the scope of work or specifications; and
- (b) all public bid documents. The bid documents shall include a standard contract as approved by Parks along with the plans and specifications for such contract.

(2) CPC shall keep a record of all sealed bids received and shall provide copies thereof to Parks.

(3) CPC shall award all subcontracts or other contracts for goods and services to or enter into leases with the lowest responsive and responsible bidder unless CPC determines, with the approval of the Commissioner, that an alternative award would be in the City's

best interests. Where CPC intends to reject the lowest bidder, CPC shall inform Parks in writing of the reasons for the rejection. CPC shall reject the low bidder only upon the prior written consent of Parks. CPC shall then review the remaining bids and select the next lowest responsive and responsible bidder. Parks reserves the right to direct CPC to reject all bids in the best interests of the City, and require CPC to rebid the contract.

(4) Required Provisions for Purchases and Subcontracts in excess of \$25,000:

(a) Each subcontract shall consist of a standard subcontract as approved by Parks and the specifications for each particular job. The terms of each subcontract shall be subject and subordinate to the terms and conditions of this agreement.

(b) In each and every subcontract awarded by CPC under this agreement, CPC shall reserve the same rights of termination and liquidated damages as the City and Parks may exercise over CPC under any provisions of this agreement.

D. Ineligible Subcontractors. CPC shall not employ or otherwise engage, or cause or permit any subcontractor or sub-subcontractor at whatever tier, to employ or otherwise engage:

(1) CPC,

(2) any subsidiary, affiliate or parent of CPC,

(3) any person whose immediate family member is a director of CPC or is employed by CPC at a salary in excess of ten thousand dollars (\$10,000) per year, to perform work hereunder without the prior written approval of the Commissioner. For purposes of this paragraph, the term "immediate family member" shall mean a wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild. For purposes of this paragraph, "any person" shall also include any corporation

or partnership in which the above described immediate family member is employed or has an ownership interest of more than 5%.

29. PPB RULES

This contract is subject to the Rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of this agreement, the Rules shall take precedence.

30. STATE LABOR LAW AND CITY ADMINISTRATIVE CODE

A. As required by New York State Labor Law § 220-e:

(1) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, neither CPC, its subcontractors, or any person acting on behalf of CPC or its subcontractors, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(2) That neither CPC, its subcontractors, nor any person acting on CPC's behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, disability, sex or national origin;

(3) That there may be deducted from the amount payable to CPC by the City under this agreement a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this agreement; and

(4) That this agreement may be canceled or terminated by the City, and all monies due or

to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the agreement.

(5) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

B. As required by New York City Administrative Code § 6-108

(1) It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

(2) It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

(3) Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this contract.

(4) Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

31. E.O. 50 RIDER - EQUAL EMPLOYMENT OPPORTUNITY

A. This agreement is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O. 50") and the Rules and Regulations promulgated thereunder. This agreement will not be awarded unless and until these requirements have been complied with in their entirety. By signing this agreement, CPC agrees that it:

- (1) will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) CPC agrees that when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status, or sexual orientation;
- (3) will state in all solicitations or advertisements for employees placed by or on behalf of CPC that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- (4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity

commitments under E.O. 50 and the rules and regulations promulgated thereunder; and

- (5) will furnish all information and reports including an Employment Report before the award of the contract which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Bureau of Labor Services ("Bureau"), and will permit access to its books, records and accounts by the Bureau for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. CPC understands that in the event of its noncompliance with nondiscrimination clauses of this agreement or with any such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with the E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency held of any or all of the following sanctions:

- (1) disapproval of CPC;
- (2) suspension or termination of the agreement;
- (3) declaring CPC in default; or
- (4) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

C. CPC agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. CPC will take such action with respect to any subcontract or

purchase order as may be directed by the Director of the Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

D. CPC further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

32. FEDERAL EMPLOYER IDENTIFICATION NUMBER

CPC represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of CPC to receive public contracts. The Federal Employer Identification Number of CPC is 13-3022855.

33. PARKS' RESERVATION OF RIGHTS AND INTERESTS

A. Public Events. The parties to this agreement will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this agreement.

B. Public Communications. In any statement or release made to the public relating to the subject of this agreement, CPC will conspicuously acknowledge the involvement of Parks. If the Commissioner finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in Central Park is incorrect or unacceptable, CPC and the Commissioner agree in good faith to make such release, advertisement or statement accurate and

acceptable to both parties.

C. Publications. If CPC publishes a work discussing any aspect of performance of any service covered by this agreement, CPC will acknowledge therein the involvement, if any, of Parks, and Parks will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

D. Special Events. Parks expressly reserves the right to schedule and conduct special events, alone or in conjunction with co-sponsors, including but not limited to concerts, fairs, and festivals, in Central Park. Any monies collected by Parks or City for special events shall be included in the calculations of the annual revenue from concessions described in paragraph 11, if the special events are Special Event Concessions pursuant to Title 56 Section 2-10 of the Rules of the City of New York.

34. JURY TRIAL

CPC hereby expressly waives all rights to trial by jury in any summary proceeding hereafter instituted by the City against CPC or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this agreement with regard to any matter whatsoever in any way connected with this agreement including, but not limited to, the relationship between the City and CPC. This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this agreement or any terms hereof.

35. USE OF NAME

The parties will not use the name of the other party, its subsidiaries or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the

written consent of the other party. This provision will survive any termination of this agreement.

36. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

This agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of CPC and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this agreement or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York.

To effect this agreement and intent, it is understood that:

A. If the City initiates any action arising out of this agreement against CPC in Federal Court or in New York State Court, service of process may be made on CPC either by personal service upon an officer or authorized agent of CPC, wherever CPC may be found, or by registered mail addressed to CPC at the address set forth in this agreement, or to such other address as CPC may provide to Parks or the City in writing; and

B. With respect to any action arising out of this agreement between the City and CPC in New York State Courts, CPC expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

C. With respect to any action arising out of this agreement between the City and CPC in Federal Court located in New York City, CPC expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

D. If CPC commences any action arising out of this agreement against the City in a court located other than in the City and State of New York, upon request of the City, CPC shall consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, CPC shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

E. All disputes arising out of this agreement shall be interpreted and decided in accordance with the laws of the State of New York.

37. CLAIMS AND ACTIONS THEREON

A. No action at law or proceeding in equity against the City or Parks shall lie or be maintained upon any claim based upon this agreement or arising out of this agreement or in any way connected with this agreement unless CPC shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against the City by CPC upon any claims based upon this agreement unless such action shall be commenced within six months after the date of filing in the Office of the Comptroller of the City of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this agreement, or within six months after the accrual of the cause of action, whichever first occurs, other than with respect to claims for indemnification pursuant to paragraph 14.

C. In the event any claim is made or any action brought in any way relating to the agreement herein, CPC shall diligently render to Parks and/or the City of New York without

additional compensation any and all assistance which Parks and/or the City of New York may require of CPC.

38. CLAIM AGAINST OFFICERS OR EMPLOYEES

No claim whatsoever shall be made by CPC against any officer, employee or volunteer of the City for, or on account of, anything done or omitted in connection with this agreement, and no claim whatsoever shall be made by City against any officer, employee, volunteer or trustee of CPC for, or on account of, anything done or omitted in connection with this agreement. Nothing in this paragraph 38 shall limit the reciprocal indemnification obligations of the parties contained in paragraph 14.

39. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

A. CPC agrees that neither CPC nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of CPC or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the New York City Comptroller may, at his option, render, forfeit and void this agreement.

C. CPC shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller

thereunder.

40. INFRINGEMENTS

CPC shall be liable to Parks and hereby agrees to indemnify and hold Parks harmless for any damage or loss or expense sustained by Parks from any infringement by CPC of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by CPC in the performance of this agreement.

41. ANTI-TRUST

CPC hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular services purchased or procured by the City under this agreement.

42. SEVERABILITY

If any provision(s) of this agreement is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

43. POLITICAL ACTIVITY

There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this agreement, nor shall any of the funds provided under this agreement be used for such purposes.

44. ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this agreement that each and every provision of law required to be inserted in the agreement shall be and is inserted herein.

Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

45. CONDITIONS PRECEDENT

A. This contract shall neither be binding nor effective unless it has been registered by the Comptroller who shall have endorsed his or her certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this agreement.

B. The requirements of this section of the contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this contract to be effective and for the expenditure of City funds.

46. INTENTIONALLY OMMITTED

47. MODIFICATION

No waiver or modification of any provision of this agreement will be effective unless it is

in writing and signed by duly authorized representatives of Parks and CPC.

Agreed to this 28th day of April 2006:

By: Adrian Benepe

Adrian Benepe
Commissioner
Parks & Recreation

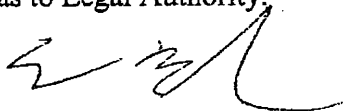
Dated: April 28, 2006

By: Douglas Blonsky

Douglas Blonsky
President
Central Park Conservancy, Inc.

Dated: April 28, 2006

Approved as to Form
Certified as to Legal Authority:



Acting Corporation Counsel

APR 25 2006

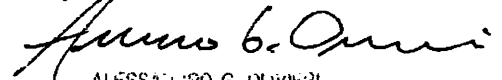
STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this 23rd day of April, 2006 before me personally came Adrian Benepe to me known, and known to be the Commissioner of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in his official capacity and for the purpose mentioned therein.

Notary Public



ALESSANDRO G. OLIVERI
Notary Public, State of New York

No. 02018001937

Qualified in New York County

Commission Expires 1/26/2010

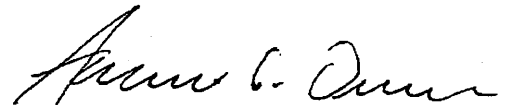
STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this 23rd day of April, 2006 before me personally came Douglas Blonsky, who, being duly sworn by me did depose and say that he is the President of the Central Park Conservancy, Inc., the corporation described in and who executed the foregoing instrument and he acknowledged that he executed the same in his official capacity and for the purposes mentioned therein.

Notary Public



ALESSANDRO G. OLIVERI

No. 02018001937

Qualified in New York County

Commission Expires 1/26/2010

